

# Law Applicable to Real Rights, Assignment of Claims and certain Matters not covered by the Act on General Rules for Application of Laws (summary)

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This Paper addresses cases, doctrines *de lege lata*, and a new social phenomenon on real rights, assignment of claims, and certain matters not covered by the Act on General Rules for Application of Laws (hereafter called the “Act”). This is based on my report in the Symposium “The Act on General Rules for Application of Laws — Ten Years After Its Implementation” held by this Association in 2018.

## 1. Real Rights (Rights *in rem*)

### (1) Relation between Contract and Real Right

A judicial precedent on this problem has appeared.

### (2) Real Right on automobile

According to the judicial precedent, where an automobile is operable, a real right thereon is governed by the law of the principal place of operation (in many cases, the place of registration). Recently it has come true that a chassis is registered and operated both in Japan and in the Republic of Korea. Including it in the concept “automobile,” the author discussed the connection of such a right.

### (3) Lien

#### (a) Lien in general

The author advocates that a lien is governed solely by Article 13 of the Act (*lex rei sitae*).

#### (b) Maritime Lien (Lien on a vessel)

The author maintains the theory that the law of the flag governs maritime liens.

## 2. Assignment of Claims

The connection of assignment of claims yet to arise is under discussion. The author foresees that the governing law of the claim is scheduled in many cases. And the author distinguishes the effect against the obligor and that against a third party. To the former effect, Article 23 of the Act applies. Where the governing law is not scheduled, it should be determined objectively (Art. 8, *etc.* of the Act). Also, to the latter effect, Art. 23 ap-

plies. Apart from Art. 23, the law of the assignor's habitual residence should apply, where the governing law is not scheduled.

### 3. Set-offs

The prevailing view connects set-offs to the governing law of the passive claim. The author also gives support to this view.

### 4. *Actio Pauliana* (Obligee's Right to Demand Rescission of Fraudulent Act)

The author seconds to the view of the law of the place of the property.

### 5. Agency

Here a presupposition problem is focused — namely, whether the conflict rule on the authorized agency and that on the unauthorized agency in a broad sense (including apparent agency). It is now commonly accepted that such a distinction is unnecessary.

### 6. Corporation (legal person) — Piercing the Corporate Veil

Most of the judicial decisions on corporation are on piercing the corporate veil. This problem is thus focused. The author advocates classifying the problems into the following two categories.

The problems of whether the counterparty with a legal relationship (contract, tort, *etc.*) with the corporation should be protected under that legal relation are left to the law applicable to the legal relation. On the other hand, the problems that should be proceeded uniformly as for the responsibility of the corporation member against a third party should be governed by *lex societatis*.